

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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TONJA FENTON,

Plaintiff,

v.

SERGEANT NERBER, et al,

Defendants.

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DECISION & ORDER

12-CV-6380P

On November 9, 2012, *pro se* plaintiff Tonja Fenton (“plaintiff”) filed an amended complaint pursuant to 42 U.S.C. § 1983 alleging, *inter alia*, that defendants failed to protect her from threats to her health and safety in violation of the Eighth Amendment and that defendants retaliated against her for filing grievances and a lawsuit in violation of the First and Fourteenth Amendments. (Docket # 20). Currently before this Court is plaintiff’s third motion for the appointment of counsel. (Docket # 18).

Plaintiff’s previous motions for appointment of counsel were denied on the grounds that issue had yet to be joined, and, therefore, there was insufficient information before the Court to make the necessary assessment of plaintiff’s claims under the standards promulgated by *Hendricks v. Couglin*, 114 F.3d 390, 392 (2d Cir. 1997), and *Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986). (Docket ## 8, 13). There continues to be insufficient information before the Court to make an assessment of plaintiff’s claims because issue has not yet been joined in this case as defendants’ time to respond to plaintiff’s complaint has been extended to January 11, 2012. (Docket # 15).

It is therefore the Decision and Order of this Court that plaintiff's motion for the appointment of counsel **(Docket # 18) is DENIED without prejudice** at this time. It is the plaintiff's responsibility to retain an attorney or press forward with this lawsuit *pro se*. 28 U.S.C. § 1654.

**IT IS SO ORDERED.**

*s/Marian W. Payson*

MARIAN W. PAYSON  
United States Magistrate Judge

Dated: Rochester, New York  
December 17, 2012